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## CHAPTER 3

### **DOCUMENTATION AND OTHER PROCESSING REQUIREMENTS**

- This chapter describes the documentation requirements for each loan submitted for mortgage insurance and the specific requirements lenders must observe in processing and underwriting FHA-insured mortgages. The lender is responsible for asking sufficient questions to elicit a complete picture of the borrower's financial situation, source of funds for the transaction, and the intended use of the property. All information must be verified and documented. The lender must also verify and document the identity of the loan applicant(s).

#### **SECTION 1: UNDERWRITING DOCUMENTATION**

- - 3-1 **APPLICATION PACKAGE.** The application package must contain all documentation supporting the lender's decision to approve the mortgage loan. *When standard documentation does not provide enough information to support this decision, the lender must provide additional explanatory statements, consistent with other information in the application, to clarify or to supplement the documentation submitted by the borrower.*
  - All documents may be up to *120 days old* at the time the loan closes (*180 days* for new construction) unless this or other applicable HUD instructions specify a different timeframe, or the nature of the document is such that its validity for underwriting purposes is not affected by being older than the number of prescribed days (e.g., divorce decrees, tax returns). Updated, written verifications must be obtained when the age of the documents exceed these limits. Verification forms or documents used as an alternate to these verifications must pass directly between the lender and the provider without being handled or transmitted by any third party or using any third party's equipment. No document used in the processing or underwriting of a loan may be handled or transmitted by or through an interested third party to the transaction.
  - The Verification of Deposit (VOD) and Verification of Employment (VOE) may be faxed documents or printed pages from the Internet if they clearly identify their sources (e.g., contain the names of the borrower's employer or depository/investment firm). The lender is accountable for ascertaining the authenticity of the document by examining information included in a document's headers and footers. The lender should verify the authenticity of printed Web pages by examining the pages for similar information. A printed Web page also must show its uniform resource locator (URL) address, as well as the date and time the document was printed.
  - Lenders may not accept or use documents relating to the credit, employment or income of borrowers that are handled by or transmitted from or through

interested third parties (e.g., real estate agents, builders, sellers) or by using their equipment.

- The following documents are generally required for mortgage credit analysis in all transactions except for certain streamline refinances:

- A. **Loan Application.** Uniform Residential Loan Application (URLA), signed and dated by all borrowers and the lender, and the Addendum to the URLA (form HUD-92900-A).
- B. **Mortgage Credit Analysis Worksheet.** Form HUD 92900-WS or HUD-92900-PUR, as appropriate.
- C. **Social Security Number Evidence.** For all borrowers, including US citizens, the lender is required to document a valid SSN for each borrower, co-borrower, and co-signer on the mortgage. All individuals eligible for legal employment in the US must have a SSN. Each borrower must provide the lender with evidence of his or her own valid SSN as issued by the Social Security Administration (SSA). This applies to purchase money loans and all refinances, including streamline refinances. While the actual social security card is not required, the lender is required to validate the SSN. Lenders may use various means for validating the SSN including examining the borrower's pay stubs, passport, valid tax returns, and may use service providers including those with direct access to the SSA. The lender is also required to resolve any inconsistencies or multiple SSNs for individual borrowers that are revealed during loan processing and underwriting. (Also see paragraph 2-2 B).
- D. **Credit Report.** The lender must obtain a credit report on all borrowers who will be obligated on the mortgage note (except for streamline refinance transactions).
- E. **Verification of Employment (VOE).** VOE and the borrower's most recent pay stub are to be provided. "Most recent" means at the time the initial loan application is made. If the document is not more than 120 days old when the loan closes (180 days old on new construction), it does not have to be updated.

**Alternative Documentation.** *As an alternative to obtaining a VOE, the lender may obtain the borrower's original pay stub(s) covering the most recent 30-day period, along with original IRS W-2 Forms from the previous two years. The pay stub(s) must show the borrower's name, social security number, and year-to-date earnings. Any copies of the W-2 Form not submitted with the borrower's income tax returns are considered "original" W-2's. (These original documents may be photocopied and returned to the borrower.) The lender also must verify by telephone all current employers. The loan file must include a certification from the*

*lender that original documents were examined and the name, title, and telephone number of the person with whom employment was verified. For all loans processed in this manner, the lender also must obtain a signed copy of Form IRS 4506 Request for Copy of Tax Form, Form IRS 8821, or a document that is appropriate for obtaining tax returns directly from the IRS. The lender also may use an electronic retrieval service for obtaining W-2 and tax return information.*

*If the employer will not give telephone confirmation of employment or if the W-2 indicates inconsistencies (e.g., FICA payments not reflecting earnings), standard employment documentation must be used.*

- F. **VOD.** VOD and most recent bank statements are to be provided. “Most recent” means at the time the initial loan application is made. Provided the document is not more than 120 days old when the loan closes (180 days old on new construction), it does not have to be updated.

**Alternative Documentation.** *As an alternative to obtaining a VOD, the lender may obtain from the borrower original bank statement(s) covering the most recent three-month period. Provided the bank statement shows the previous month's balance, this requirement is met by obtaining the two most recent, consecutive statements.*

- G. **Federal Income Tax Returns.** Federal income tax returns (both individual returns and business returns) for the past two years, including all applicable schedules, for self-employed borrowers, are required. Commissioned individuals must provide individual federal income tax returns for the past two years. The lender must obtain signed Forms IRS 4506, IRS 8821, or whatever form or electronic retrieval service is appropriate for obtaining tax returns directly from the IRS for any loan for which the borrower's tax returns are required.

- H. **Sales Contract.** The sales contract and any amendments or other agreements and certifications are to be included in the case binder. Either an original or a certified true copy of the sales contract received by the lender is required.

- I. **Real Estate Certification.** Real estate certification, signed by the buyer, seller, and selling real estate agent or broker (if not contained within the purchase agreement) are required. Also see paragraph 3-3, below.

- J. **Verification of Rent or Payment History of Present/Previous Mortgages.** This document must be in the form of a direct verification from the landlord or mortgage servicer or through information shown on the credit report.

- K. **Uniform Residential Appraisal Report (URAR).** The URAR and Valuation package must be included in the endorsement binder except for streamline refinances made without appraisals.
- L. **Explanatory Statements.** Explanatory statements or additional documentation necessary to make a sound underwriting decision are to be included in the case binder.

### 3-2 **DOCUMENTATION STANDARDS.**

- A. **Application Forms.** Application forms must be signed and dated by all borrowers applying for the mortgage and assuming responsibility for the mortgage debt.
- B. **Verifications.** Rather than requiring borrowers to sign multiple verification forms, the lender may ask the borrower to sign a general authorization form that gives the lender blanket authority to verify information needed to process the mortgage loan application, such as past and present employment records, bank accounts, stock holdings, etc. If the lender uses such an authorization, he or she must attach a copy of the authorization to each verification sent. Additionally, lenders may use self-adhesive signature labels for laser printed verifications. Each label must completely and clearly indicate its use and must contain the Privacy Act notification.
- C. **Documents Signed in Blank.** Lenders may not have borrowers sign documents in blank, or on blank sheets of paper.

### 3-3 **REAL ESTATE CERTIFICATION.** The borrower, seller, and the selling real estate agent or broker involved in the sales transaction must certify that the terms and conditions of the sales contract are true to the best of their knowledge and belief and that any other agreement entered into by any of the parties in connection with the real estate transaction is part of, or attached to, the sales agreement.

- If the sales contract contains a provision that there are no other agreements between parties and that the terms of the sales contract constitute the entire agreement between the parties, the certification specified in the above paragraph is not needed if all parties are signatories to the sales contract submitted at the time of underwriting.

### 3-4 **AMENDATORY CLAUSE.** An amendatory clause must be included in the sales contract when the borrower has not been informed of the appraised value by receiving a copy of Form HUD-92800.5B, Conditional Commitment/DE Statement of Appraised Value or VA-CRV *before* signing the sales contract. The amendatory clause must contain the following language:

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- "It is expressly agreed that notwithstanding any other provisions of this contract, the purchaser shall not be obligated to complete the purchase of the property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise unless the purchaser has been given in accordance with HUD/FHA or VA requirements a written statement by the Federal Housing Commissioner, Department of Veterans Affairs, or a Direct Endorsement lender setting forth the appraised value of the property of not less than \$\_\_\_\_\_. The purchaser shall have the privilege and option of proceeding with consummation of the contract without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value or the condition of the property. The purchaser should satisfy himself/herself that the price and condition of the property are acceptable."

The actual dollar amount to be inserted in the amendatory clause is the sales price stated in the contract. If the borrower and seller agree to adjust the sales price in response to an appraised value that is less than the sales price, a new amendatory clause is *not* required. However, the loan application package must include the original sales contract with the same price as shown on the amendatory clause, along with the revised or amended sales contract. The Amendatory Clause is not required on HUD REO sales, sales where the seller is Fannie Mae, Freddie Mac, the Department of Veterans Affairs, Rural Housing Services, other Federal, State and local government agencies, mortgagees disposing of REO assets, or sellers at foreclosure sales and those sales where the borrower will not be an owner-occupant (e.g., sales to nonprofit agencies).

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## **SECTION 2: PROCESSING REQUIREMENTS**

- 3-5 POWER OF ATTORNEY.** Power of attorney may be used for *closing documents*, including page four of the Addendum to the URLA and the final URLA if it is signed at closing. Any power of attorney, whether specific or general, must comply with state law and allow for the mortgage note to be enforced legally in that jurisdiction. It is the lender's responsibility to assure that clear title can be conveyed in the event of foreclosure.

Except for the conditions described below, the *initial loan application* may not be executed by using a power of attorney (i.e., it must be signed by all borrowers). Either the initial loan application or the final, if one is used, must contain the signatures of all borrowers.

- A. **Military Personnel.** Power of attorney may be used for military personnel on overseas duty or on an unaccompanied tour. The lender should obtain the service person's signature on the application by mail or fax machine.
- B. **Incapacitated Borrowers.** Power of attorney may be used for incapacitated borrowers who are unable to sign the mortgage application. The lender must provide evidence that the signer has authority to purchase the property and to obligate the borrower. Acceptable evidence includes a durable power of attorney specifically designed to survive incapacity and avoid the need for court proceedings. The incapacitated individual must occupy the property to be insured (except on eligible investment property).

- 3-6 LOAN APPLICATION DOCUMENT PROCESSING.** Due to various disclosure requirements and our long-standing belief that borrowers are best served when certifications they must make are divulged as early as possible in the loan application process, the application for mortgage insurance must be signed and dated by the borrower(s) before the loan is underwritten. However, we also recognize the burden on lenders and borrowers of having various documents re-signed by the borrower after the loan application has been taken.

— To alleviate this burden, lenders are permitted to process and to underwrite the loan after the borrower completes an initial URLA and initial Addendum. If the lender asks the borrower to complete an initial Addendum, based on the preliminary information obtained at loan application, it is not necessary to have a final loan application or *final* Addendum signed before underwriting. The underwriter must condition the loan approval for the final URLA and final Addendum to be signed and dated by the borrower(s) anytime before or at closing.

Page one of the *initial* Addendum must be signed by the interviewer; page one of the *final* Addendum may be signed by anyone authorized to bind the company in

its business dealing with HUD. Page four of the Addendum must be signed by the borrower at closing.

The underwriter must have the final Addendum and URLA before underwriting the loan application, whether or not the borrower signs it. If the lending institution uses only one loan application that serves as both the initial and final, the institution still must obtain a completed final Addendum before underwriting the loan. A copy of any initial and final application must be submitted as part of the endorsement package. A satisfactory letter of explanation from the borrower addressing any significant variances between the initial application and final application is also required.

If the lender chooses not to complete an initial Addendum (i.e., the lender asks the borrower to sign a completed Addendum before the loan is underwritten), simultaneous appraisal and mortgage credit review is permissible, if the lender discloses to the borrower that the lender's DE underwriter may adjust the appraised value. The disclosure statement below becomes part of the official file submitted to FHA for endorsement and must be signed by the borrower(s).

"I (we) understand that my (our) application for an FHA-insured mortgage is being processed under the Direct Endorsement (DE) program. The lender has advised me (us) that the appraiser has assigned a value of \$\_\_\_\_\_ to the property being purchased. I am (we are) aware that the official determination will be made by the DE underwriter when he/she reviews the report. It is understood that I (we) may elect to cancel the application or renegotiate with the seller if the DE underwriter reduces the value below the amount set forth in the sales contract or requires additional repairs for which the seller will not be responsible."

- 3-7 SEVEN-UNIT LIMITATION.** Qualified investor entities are limited to a financial interest (i.e., any type of ownership, regardless of type of financing) in seven rental dwelling units, when the subject property is part of, adjacent to or contiguous to a property, subdivision or group of properties owned by the investor. Each dwelling unit in two-, three-, and four-family properties counts toward the seven-unit limitation. The rental units in an owner-occupied two-, three-, or four-unit property also count toward this limitation. The lender is responsible for assuring compliance with this regulation (see 24 CFR 203.42 for additional information). Waivers to the seven-unit limitation can only be initiated by the jurisdictional HOC for good cause.

- 3-8 HOTEL AND TRANSIENT USE.** The lender must obtain a hotel and transient use certification (Form HUD-92561), signed by the borrower, for every application on a two-, three-, or four-family dwelling. This certification also is required for a single-family dwelling that is one of a group of five or more dwellings held by the same borrower. Fulfilling this requirement assures FHA that the property will not be used for hotel or transient purposes, or otherwise rented for periods less than 30 days.
- 3-9 SALES CONTRACTS AND LOAN CLOSING.** Except for houses sold by FHA under its Real Estate Owned (REO) program, we are not a party to the sales agreement. When a sales contract contains conditions that, if performed, would violate our requirements, the lender must obtain an addendum or modification to the sales agreement that would allow for conformance to those requirements. Nevertheless, failure to perform a condition of the contract will not be grounds for denying loan endorsement, *provided the loan closes in compliance with all regulations and policies*. For example, the sales contract may require the seller to pay an amount in excess of our present limits. Provided the lender closes the loan in accordance with our requirements, endorsement will not be withheld. The sales contract need not refer to FHA financing to be valid.
- 3-10 LENDER RESPONSIBILITY AT CLOSING.** The lender is required to resolve all problems regarding title to the real estate and to review all documents to assure compliance with all conditions of the commitment, close the loan before the expiration of the FHA-issued certificate of commitment or DE approval and expiration of the credit documents, and to submit the loan documents for insurance within 60 days of loan closing or disbursement, whichever is later.
- The following are required at closing:
- A. Signatures.** Signatures of all individuals appearing on the loan application must appear on the mortgage note. All owners of the property to be vested in title must sign the security instruments (i.e., mortgage, deed of trust, or security deed). In order to create a valid first lien, to pass clear title, or to waive inchoate rights, any individual whose signature is required by state law must sign the security instruments and/or note. All applicants must sign and date all closing documents where appropriate.
- B. Closing in Compliance with Loan Approval.** The loan must *close* in the same manner in which it was underwritten and approved. Except for the conditions described in paragraph 2-2 D, additional signatures on the security instruments and/or mortgage note of individuals not reviewed during mortgage credit analysis may be grounds for withholding endorsement.



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### **SECTION 3: FAIR HOUSING AND OTHER FEDERAL REQUIREMENTS**

**3-11 FEDERAL STATUTES AND REGULATIONS.** Federal statutes and regulations concerning fair housing and equal credit opportunities apply to FHA's single-family mortgage insurance programs. Lenders and FHA must abide by these statutes and regulations for new originations and assumption transactions. These regulations include:

- A. **Fair Housing Act (42 USC 3605).** This act prohibits discrimination against individuals based on their race, color, religion, sex, handicap, familial status, or national origin for the availability of residential real estate related transactions, i.e., making or purchasing loans or providing other financial assistance: 1) for purchasing, constructing, improving, repairing, or maintaining a dwelling, or 2) secured by residential real estate. HUD is responsible for enforcing the Fair Housing Act. Information regarding this act may be obtained from the HUD Office of Fair Housing and Equal Opportunity, 451 Seventh Street, S.W., Washington, DC 20410-2000.

The Fair Housing Act prohibits the following:

1. **Discrimination in Making Loans and Providing Other Financial Assistance.** Prohibited practices include, but are not limited to, failing or refusing to provide information regarding the availability of loans or other financial assistance; application requirements, procedures or standards for the review and approval of loans or financial assistance; or providing information that is inaccurate or different from that provided to others because of race, color, religion, sex, handicap, familial status, or national origin.
  2. **Discrimination in the Terms and Conditions for Making Available Loans or Other Financial Assistance.** Unlawful conduct includes: a) using different policies, practices or procedures in evaluating or in determining creditworthiness of any person in connection with the provision of any loan or other financial assistance secured by residential real estate, or b) determining the type of loan or other financial assistance to be provided, or fixing the amount, interest rate, duration or other terms for a loan or other financial assistance, because of race, color, religion, sex, handicap, familial status, or national origin.
- B. **Equal Credit Opportunity Act (ECOA) (15 USC 1601 et seq.).** ECOA prohibits discrimination in the extension of credit on the basis of race, color, religion, national origin, sex, marital status, or age; because all or

part of the borrower's income derives from public assistance; or because the borrower has in good faith exercised any right under the Consumer Credit Protection Act. The act and Regulation B of the Board of Governors of the Federal Reserve System (12 CFR Part 202) outline rules to be observed in evaluating the creditworthiness of borrowers. Under no circumstances can the source of confidential credit information be disclosed to third parties, except as required by law.

**ECOA prohibits the lender from the following:**

1. Making any oral or written statement, in advertising or otherwise, to borrowers or prospective borrowers that would discourage on a prohibited basis a reasonable person from making or pursuing an application.
2. Inquiring whether income stated in an application is derived from alimony, child support, or separate maintenance payments, unless the creditor discloses to the borrower that such income need not be revealed if the borrower does not want the lender to consider it in determining the borrower's creditworthiness.
3. Inquiring about the sex, race, color, religion, or national origin of an applicant (except as provided in 12 CFR 202.13 regarding information for monitoring purposes).
4. Inquiring about birth control practices, or intentions concerning the bearing and rearing of children, or capability to bear them.

**Notice of Action Taken on Application.** Regulation B requires that a borrower be notified of action taken by the creditor within 30 days after receiving the completed application. All applications submitted for underwriting are considered completed applications for the purpose of complying with the notification requirements of Regulation B. Actions that are to be taken by HUD or the DE lender include:

1. Issuing a Firm Commitment or DE approval;
2. Rejecting the borrower for mortgage credit reasons; and
3. Notifying the borrower of the lender's inability to process the application because certain items are incomplete or were not submitted.

The maximum time limit for notification is 30 days after the date the DE underwriter receives the application. Under no circumstances is the processing of an application to be delayed in such manner that the required notification to the borrower cannot be provided by the lender within this limit. The notification to the borrower must be provided within 30 days

after a loan application is resubmitted or a reconsideration request is received by the DE lender (or the appropriate HOC for FHA-processed cases). For the purposes of complying with the notification requirements of Regulation B, resubmissions and reconsiderations are considered new applications.

**Rejection/Denial of Loan.** If a loan is rejected, the lender must complete a rejection notice consistent with the requirements of Regulation B. (On FHA-processed loans, FHA issues a rejection notice directly to the lender.) At least one credit aspect must be rejected before an overall rejection can be issued. The rejection notice must provide specific reasons for the rejection. (Delinquent credit accounts need not be listed.) The lender must retain case binders on rejected loans for 26 months from the date the application is received by the DE underwriter or rejected by the appropriate HOC. The rejection notice must contain all the reasons for denial/ineligibility and any counter proposals to effectuate loan approval, such as reduced mortgage amount, etc.

- C. **Fair Credit Reporting Act (FCRA).** This legislation is intended to control collection and dissemination of information about granting credit to the borrower. It is designed primarily to ensure that consumer reporting agencies exercise fairness, confidentiality, and accuracy in preparing and disclosing credit information.

The following conditions apply:

1. When adverse action is taken based, in whole or in part, on a credit report, the lender must disclose to the borrower the name, address, and, if available, the telephone number of the credit reporting agency issuing the report. The notice must indicate that the borrower is entitled to request from the credit reporting agency information reported to the lender that was used as a reason for rejection.
2. The notice of adverse action must be given at the time of notice of mortgage rejection, or within a reasonable time thereafter. Any such notice should be retained in the application file.

- D. **Executive Order 11063.** Executive Order 11063, as amended by Executive Order 12259, prohibits discrimination in lending practices involving housing and related facilities financed, insured, or guaranteed by the federal government.
- E. **Section 527 of the National Housing Act.** Section 527 prohibits denial of a federally related mortgage loans on of the basis of sex.

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- F. Minimum Principal Loan Amount.** Section 535 of the National Housing Act prohibits lenders from requiring, as a condition of providing a loan to be insured by FHA, that the loan amount equal or exceed a minimum amount established by the lender. In addition, Section 330(a) of the 1990 National Affordable Housing Act prohibits a variation in mortgage charge rates ("tiered pricing") that exceed 2 percent for FHA-insured mortgages made by a lender on dwellings located within an area. (See 24 CFR Part 202.20 for additional information.)
- G. Home Mortgage Disclosure Act (HMDA).** HMDA and Regulation C of the Federal Reserve Board require lenders to collect and to report information pertaining to applications for mortgage loans, in addition to data regarding originations and purchases of such loans.
1. All institutions making FHA-insured mortgages must report information pertaining to those mortgages or applications for mortgages. Institutions exempt from the reporting requirements discussed below must report their FHA mortgage application activity to HUD.
  2. All depository institutions having assets of at least \$10 million, including assets of a parent company *and* located in a Metropolitan Statistical Area (MSA), are required to report all types of loan applications (i.e., conventional, HUD, VA, and RECD) to its regulator. Reports from a subsidiary must be sent to the regulator designated for its parent company. Depository institutions need not send an additional report to HUD covering only its HUD mortgage insurance activity.
  3. All non-depository institutions having assets of at least \$10 million, including assets of a parent company *and* located in an MSA, must report all types of loan applications (i.e., conventional, FHA, VA, or RHS) to HUD, who is the designated regulator for non-depository institutions.
  4. Loan correspondents and their sponsors both must report their loan activity. The correspondent must report all loans closed in its name as loan originations, even if the loans are simultaneously transferred to a sponsor at the loan closing. The sponsor reports such loans as loan purchases. For applications that are denied, however, the information required by HMDA must be reported by the entity that made the underwriting decision to deny the loan.
- 3-12 FHA-INSURED MORTGAGES FOR HUD EMPLOYEES.** The jurisdictional HOC must process applications made by HUD employees, except for streamline refinance applications. The lender is to process and underwrite the mortgage and
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submit to the HOC for final signoff and approval. Such cases are to be sent to the attention of the Processing and Underwriting Division Director.

